DOCUMENT RESUME

ED 255 293 PS 014 985

TITLE Child Day Care Regulation in Texas: Report and Recommendations.
INSTITUTION Texas State Legislature, Austin. Senate Committee on Health and Human Resources.
PUB DATE May 84
NOTE 42p.
AVAILABLE FROM Senate Committee on Health and Human Resources, P.O. Box 12068, Austin, TX 78711.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Viewpoints (120)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Certification; Child Abuse; Child Caregivers; Childrens Rights; *Compliance (Legal); Costs; *Day Care; *Day Care Centers; *Family Day Care; History; Parent Education; Parent Responsibility; Parent Rights; Safety; Social Background; *State Legislation; State Licensing Boards; *State Standards; Teacher Education
IDENTIFIERS *Texas

ABSTRACT

As compared with figures from 1979, the incidence of validated abuse in child day care facilities in Texas has risen 330 percent. In response to growing public concern about the potential risks to children in day care, the state Senate Committee on Health and Human Resources was directed to examine state laws regulating child day care and to report findings and recommendations to the legislature. Four categories of state regulated child care were examined: day care centers, group day care homes, family day care homes, and registered family homes. The background of day care regulation in the state was reported; included was the finding that registered and licensed facilities have recently doubled while state child care regulatory staff has been cut by more than half. Recommendations to the legislature included (1) notifying parents when a day care facility's license or registration is being denied or revoked; (2) increasing parents' awareness of the state's limited regulatory function; (3) strengthening procedures for verifying registered family homes' compliance with fire, sanitation, and safety requirements; (4) authorizing legal remedies against registered family homes; (5) requiring family homes to renew registration every 2 years; (6) charging a fee for licensure or registration; and (7) increasing funding for the Child Care Licensing Division. Regulation of registered family homes, child care training, and criminal background checks for child care providers were also discussed. An appendix includes the state regulation for child care facilities. (CB)

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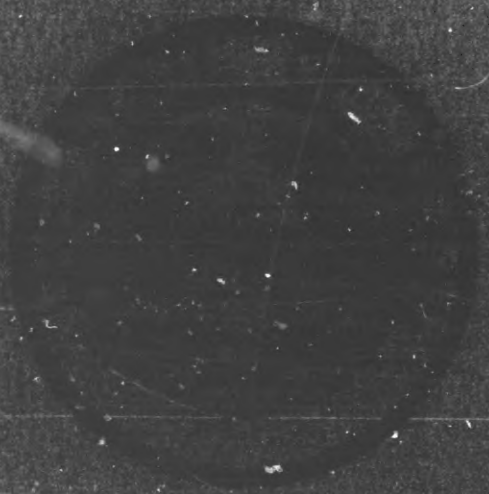
Child Day Care Regulation in Texas



Report and Recommendations

Senate Committee on Health and Human Resources

May, 1984

PS 014985

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SENATE COMMITTEE ON HEALTH AND HUMAN RESOURCES
P. O. Box 12068
AUSTIN, TEXAS 78711
(512) 475-2057

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Senate Committee on Health and Human Resources

Senator Chet Brooks,
Chairman
Senator Hector Uribe,
Vice Chairman
Senator Lloyd Doggett
Senator Chet Edwards
Senator Hugh Parmer
Senator John Sharp
Senator Carlos Truan
Senator Craig Washington
Senator John Whitmire

Betty Button
Executive Director

Room 412
Archives Building
Austin, Texas 78711
(512) 475-3057

The Honorable William P. Hobby, Jr.
Lieutenant Governor of Texas

Pursuant to your letter of February 7, 1984, the Senate Committee on Health and Human Resources herewith transmits its report and recommendations on child day care regulation in Texas.

Respectfully submitted,

Chet Brooks, Chairman

John Sharp

Hector Uribe, Vice Chairman

Carlos Truan

Lloyd Doggett

Craig Washington

Chet Edwards

John Whitmire

Hugh Parmer

INTRODUCTION

Today, approximately 500,000 Texas children are cared for in over 21,000 child day care facilities across the state. The majority of these children receive high quality care in a safe and nurturing environment. Others, however, are not so fortunate.

According to statistics released by the Texas Department of Human Resources, there were 342 validated incidents of child abuse in Texas day care facilities in 1983, and a total of 4,726 complaints were reported to the department during the same period. Compared with figures from 1979, the incidence of abuse has risen 330% while the number of complaints has increased by 118%.

In response to growing public concern about the potential risks to children in day care facilities in Texas, Lieutenant Governor William P. Hobby, Jr., directed the Senate Committee on Health and Human Resources to examine state laws regulating child day care and to report its findings and recommendations to the Legislature upon completion of the study.

The four categories of state-regulated child care the committee examined are: day care centers, group day care homes, family day homes, and registered family homes. Statutory definitions of each category can be found in the Appendix, but for purposes of this report, day care centers, group day care homes, and family day homes will be referred to as licensed facilities. Information and recommendations regarding registered facilities will apply only to registered family homes.

OVERVIEW

In 1921, the Texas Legislature passed a law requiring any individual or organization involved in boarding or sheltering infants or pregnant women for compensation to be licensed by the state. Eight years later, the licensure law was expanded to include any facility providing care to children during some part of the day.

Since 1929, the laws regulating child day care have been amended numerous times. Most significant, however, was the passage of the comprehensive Child Care Licensing Act of 1975, currently referred to as Chapter 42 of the Human Resources Code (see Appendix). The 1975 Act, with minor revisions, serves as the foundation for child day care regulation in Texas today.

Chapter 42 of the Human Resources Code requires all child care facilities to be licensed, certified, or registered by the state unless specifically exempted by statute. The Texas Department of Human Resources is the state agency with statutory responsibility for enforcing child care regulations and for establishing and ensuring minimum standards of care.

Child day care facilities are classified according to the number of children receiving care, where the service is provided, the number of hours and time of day the facility is operational, and the relationship of the children to the caregiver and to each other. Certified facilities consist primarily

of state-operated child-placing agencies and child care facilities. Licensed and registered facilities provide care for less than twenty-four hours per day and are commonly known by the public as "day care" facilities.

Three categories of licensed day care facilities are defined by law: (1) "day care centers" provide care for more than twelve children under fourteen years of age; (2) "group day care homes" provide care for seven to twelve children under the age of fourteen; and (3) "family day homes" provide care for six or fewer children under fourteen years of age in a location other than the home of the caregiver or any of the children. Under Texas statutes, these facilities must be inspected by the Texas Department of Human Resources at least once a year for compliance with minimum child care standards. Annual fire and sanitation inspections by local or state authorities are also required by departmental rules.

Only one category of regulated child day care facilities is required to register with the state. "Registered family homes" provide care for six or fewer children under fourteen years of age in the caregiver's own residence. The number of children permitted may exceed six if the additional children are the caregiver's own or if after school care is provided to the siblings of the other children. At no time can the number of children in the home exceed twelve.

Registered family homes are not inspected by the state,

nor are they required to have fire and sanitation inspections by local or state authorities. In order to become registered, a potential caregiver merely fills out an application for registration and signs a statement verifying that the facility meets the minimum standards of care, including fire and sanitation standards. The Department of Human Resources, after reviewing the application, issues a letter of registration. Departmental representatives only visit registered facilities if formal complaints are filed.

Prior to 1975, registered family homes were licensed and inspected by the state. Although this type of child care was prevalent in Texas, only 1,953 of the home-care facilities had applied for and received licenses to operate. The reluctance of providers to apply for licensure and to have their homes inspected proved to be a major stumbling block for the Texas Department of Human Resources. Since these small, more informal facilities rarely advertised for business, it was virtually impossible for the department to locate them and enforce the licensure law.

Clearly, the concept of registration was more acceptable to the home-care providers. After the law was changed in 1975 to require registration rather than licensure, the number of facilities registering with the state began to soar. By 1977, 4,500 homes were registered, and in 1983, the number of registered family homes reached an all-time high of 18,000.

Currently, there are 14,073 registered family homes in Texas and 7,057 licensed day care facilities. This represents an increase of approximately 59% in the total number of licensed and registered facilities since 1979. The demand for day care services continues to increase as a greater number of Texas families consists of single parent households and as more and more two-parent families find it difficult to live on one income. Unfortunately, the rapid growth of day care facilities has been accompanied by a significant increase in reports of child abuse and neglect and substandard care.

In 1983, the Texas Department of Human Resources received 4,726 complaints against day care facilities. Many of these complaints concerned over-disciplining to the point of bruising, inadequate supervision of children, and caring for more children than authorized by law. Approximately half of the complaints were lodged against licensed facilities. Although licensed facilities are routinely inspected by the state, such inspections seldom result in detecting child abuse because they focus primarily on staff ratios, environmental safety, and immunization and health records. Parents and other concerned individuals play a very important role in regulating child care facilities by filing complaints with the department when abuse is suspected or when a facility is providing substandard care.

The department is mandated by law to investigate complaints and take appropriate punitive actions when necessary.

Existing state statutes authorize the department to place a facility on probation or to deny or revoke a license when state laws or minimum standards are violated. Further, the department is authorized to seek injunctive relief through the courts as well as civil and criminal penalties. In 1983, 145 licenses and registrations were either denied or revoked and 23 judicial actions were taken. According to the department, there were relatively few judicial actions due to a shortage of licensing staff and limited legal support available to pursue penalties successfully through the courts.

The effectiveness of state child care regulations depends primarily on the ability of the Texas Department of Human Resources to enforce the law and child care standards. Severe reductions in child care licensing staff, coupled with the dramatic increase in the number of facilities, and the rise in complaints of abuse and substandard care, have impeded the effectiveness of the department in carrying out its statutory responsibilities. In 1977, there were approximately 10,000 child care facilities in Texas and 600 employees of the licensing division. Today, as a result of cutbacks in appropriations, the licensing division has approximately 240 employees resporsible for regulating over 21,000 child day care providers. According to the Child Day Care Licensing Program Review Team, a team of six experts within the department who were assigned to conduct a thorough examination of day care regulation, "...the levels of

enforcement and other regulatory activities have declined to the point that the risk to children in out-of-home day care has, in some cases, substantially risen."

The trend in growth of the number of child day care providers is expected to continue as more parents enter the workforce. Local units of government, day care provider associations, and parents can make significant contributions to improving day care services in Texas. For example, several municipalities across the state have recently adopted ordinances which require facilities to provide a higher standard of care than required by state regulations. Further, such ordinances usually require both registered and licensed facilities to be inspected by local fire and sanitation authorities. Regulation at the community level may prove to be the most cost-effective approach to improving the status of child day care in Texas.

Associations of licensed and registered child care providers require their members to maintain high standards of care and strive to improve the image of the day care industry as a whole. Such organizations are able to offer seminars, workshops, and continuing education programs designed to upgrade the professional child care skills of their members. Although it is difficult for registered family home providers to participate in training scheduled during regular business hours, newly organized registered family home associations in

some areas of the state are developing programs designed to meet the particular needs of their members.

Parents of children in day care facilities play an instrumental role in regulating child day care. Since parents have frequent contact with the caregiver, they are able to monitor the quality of care provided. If properly informed, parents can detect conditions in the facility which may threaten the health or safety of their children. The state should provide parents with sufficient information to enable them to detect such conditions, to exercise judgment in selecting appropriate child care services, and to file complaints when state laws or standards are not being met.

Although the state should maintain ultimate responsibility for regulating child day care facilities, local units of government, day care provider associations, and parents can have a very positive impact on the status of child day care. Effective state laws, a well-staffed and trained regulatory agency, and a well-informed general public are critical components in protecting the health, safety, and well-being of children in day care.

PARENT NOTIFICATION

ISSUE:

There is currently no mechanism whereby parents are notified when the license or registration of a day care facility is being denied or revoked or when the facility is placed on probation.

RECOMMENDATION:

THAT THE LEGISLATURE AMEND CHAPTER 42 OF THE HUMAN RESOURCES CODE TO REQUIRE THE TEXAS DEPARTMENT OF HUMAN RESOURCES TO PROVIDE NOTIFICATION TO THE PARENT(S) OF THE CHILD(REN) IN A CHILD CARE FACILITY AND TO THE GENERAL PUBLIC REGARDING THE PROBATION, DENIAL, OR REVOCATION OF A FACILITY'S LICENSE OR REGISTRATION.

DISCUSSION:

* Although state statutes require the department to notify the person operating a facility of the department's decision and the reasons for probation, denial, or revocation of a license or registration, parents are not notified of the department's actions.
* Since facilities can remain operational throughout the probationary period and during the denial, revocation, and

appeals processes, parents may be unaware of potential risks posed by noncompliance with state laws or standards.

* Parents should be informed of the reasons behind probation, denial, or revocation of a facility's license or registration in order to make responsible decisions regarding the care of their child(ren).

* Currently, the department requires a facility to post notices at public entrances when placed on probation. However, no such notice is posted when a facility's license or registration has been revoked, which generally involves a more serious violation or repeated violations of minimum standards of care.

PUBLIC AWARENESS ACTIVITIES

ISSUE:

Many parents and members of the general public do not have a clear understanding of the role of the Texas Department of Human Resources in regulating child day care facilities, particularly the department's limited regulatory function regarding registered family homes. Further, few parents are aware of their right to obtain information from the department on specific facilities or providers.

RECOMMENDATION:

THAT THE LEGISLATURE DIRECT THE TEXAS DEPARTMENT OF HUMAN RESOURCES TO PURSUE ACTIVITIES DESIGNED TO INCREASE PUBLIC AWARENESS AND UNDERSTANDING OF CHILD DAY CARE REGULATION AND OF DEPARTMENTAL PROCEDURES FOR FILING COMPLAINTS AND OBTAINING COMPLAINT INFORMATION ON DAY CARE FACILITIES AND PROVIDERS.

DISCUSSION:

* Although registered family homes are not inspected by the state, public testimony before the Senate Committee on Health and Human Resources indicated that parents and the general public assume registration means the facility has been inspected and approved by the Texas Department of Human Resources.

* Parents need to be better informed of their responsibility for monitoring the care of their children in registered family homes. A false sense of security exists when parents are under the impression that the department is monitoring the facility for compliance with minimum standards.
* Most people are unaware that the department maintains complaint files on all licensed and registered facilities and that this information is available for public inspection.
* After a thorough examination of its Child Day Care Licensing Program, the Texas Department of Human Resources concluded that despite the department's efforts to increase public awareness, a considerable amount of public misconception about registered family homes still exists.

FIRE AND SAFETY INSPECTIONS

ISSUE:

Registered family homes are not subject to fire prevention, sanitation, and safety inspections, as are licensed child care facilities, and are only required to sign a statement certifying compliance with the minimum standards adopted by the Texas Department of Human Resources.

RECOMMENDATION:

THAT THE LEGISLATURE DIRECT THE TEXAS DEPARTMENT OF HUMAN RESOURCES TO STRENGTHEN THE PROCEDURE FOR VERIFYING REGISTERED FAMILY HOMES' COMPLIANCE WITH THE DEPARTMENT'S FIRE PREVENTION, SANITATION, AND SAFETY REQUIREMENTS.

DISCUSSION:

* Fire prevention, sanitation, and safety standards are critical components in safeguarding children in day care facilities.
* The minimum standards for each category of child care facility regulated under Chapter 42 of the Human Resources Code contain fire and sanitation requirements. Registered family homes are the only types of child day care facilities not required by the Texas Department of Human Resources to have annual fire and sanitation inspections.

* The Texas Department of Human Resources has no routine mechanism for determining registered family homes' compliance with fire prevention, sanitation, and safety requirements and must rely on filed complaints to learn of such facilities' noncompliance.

* Recognizing the lack of state inspections, some municipalities have passed local ordinances subjecting registered family homes to fire prevention, sanitation, and safety inspections by local authorities. The Senate Committee on Health and Human Resources supports such efforts and encourages other municipalities to follow suit. Additionally, the committee encourages the Texas Department of Human Resources to acknowledge inspections required by local ordinances, as long as such ordinances contain standards which are comparable to or more stringent than requirements included within the minimum standards for registered family homes.

LEGAL REMEDIES

ISSUE:

Chapter 42 of the Human Resources Code does not clearly authorize the Texas Department of Human Resources to seek legal remedies against child care facilities which are subject to registration and are believed to be noncompliant with state laws or departmental policies.

RECOMMENDATION:

THAT THE LEGISLATURE AMEND CHAPTER 42 OF THE HUMAN RESOURCES CODE TO AUTHORIZE THE TEXAS DEPARTMENT OF HUMAN RESOURCES TO SUSPEND, PLACE ON PROBATION, DENY, OR REVOKE A CHILD CARE FACILITY'S REGISTRATION AND TO SPECIFY THAT REGISTERED FACILITIES ARE SUBJECT TO THE SAME CIVIL AND CRIMINAL PENALTIES AS LICENSED FACILITIES.

DISCUSSION:

* Whereas Chapter 42 of the Human Resources Code authorizes the Texas Department of Human Resources to seek specific remedies against licensed child care facilities found to be noncompliant with either state laws, departmental rules or standards, or specific terms of the facilities' licenses, such remedies are not statutorily authorized for registered child care facilities. Thus, the department

has no clear legal authority to take punitive action against registered family homes believed to be noncompliant with state laws or regulations.

* Chapter 42 of the Human Resources Code does not authorize sanctions against unregistered child care facilities advertising publicly and, more importantly, does not delineate any criminal penalties for unregistered child care facilities subject to registration.
* The Senate Committee on Health and Human Resources advocates subjecting family homes to the same legal remedies as licensed child care facilities so that substandard and unregistered family homes can be appropriately sanctioned.

REGISTRATION RENEWAL AND POSTING

ISSUE:

Whereas licensed child care facilities are required under Chapter 42 of the Human Resources Code to renew their licenses every two years and to post their licenses, no such requirements exist for registered child care facilities.

RECOMMENDATION:

THAT THE LEGISLATURE AMEND CHAPTER 42 OF THE HUMAN RESOURCES CODE TO REQUIRE REGISTERED FAMILY HOMES TO RENEW REGISTRATIONS EVERY TWO YEARS AND TO DISPLAY THEIR REGISTRATION NOTICES IN A PROMINENT PLACE WITHIN THEIR FACILITIES.

DISCUSSION:

* Under current statutes, there is no provision for the renewal of registrations; however, the Texas Department of Human Resources has implemented renewal procedures for registered family homes through Board-adopted rules.
* According to the Texas Department of Human Resources, requiring registered child care facilities to renew their registrations every two years assists the department in updating the published list of registered family homes and maintaining more accurate statistics on the number of operational facilities.

* Furthermore, the committee believes requiring registered facilities to post registration notices will serve as an additional mechanism for educating parents about registration and aiding them in determining if a facility's registration is current.

LICENSURE AND REGISTRATION FEES

ISSUE:

The Texas Department of Human Resources is required by statute to license or register child day care facilities. Although the administrative procedures for licensing and registering are costly to the state, no fee is charged for performing this service.

RECOMMENDATION:

THAT THE LEGISLATURE AMEND CHAPTER 42 OF THE HUMAN RESOURCES CODE TO AUTHORIZE THE TEXAS DEPARTMENT OF HUMAN RESOURCES TO ESTABLISH, CHARGE, AND COLLECT REASONABLE FEES FOR LICENSURE OR REGISTRATION OF A CHILD DAY CARE FACILITY AND FOR THE RENEWAL OF SUCH LICENSE OR REGISTRATION.

DISCUSSION:

* A reasonable fee for initial licensure and registration or for renewal of a license or registration would help offset the rising administrative costs the department incurs in regulating the increasing number of child day care facilities in Texas.
* Currently, licensing inspectors and complaint investigators must be inappropriately used to process some of the applications for licensure or registration due to staffing

levels insufficient to handle the heavy caseload.

* Most occupational licenses, certifications, and registrations issued by the state require a nominal fee which covers the administrative costs of performing this service.

APPROPRIATIONS

ISSUE:

The Child Care Licensing Division of the Texas Department of Human Resources has experienced substantial reductions in funding and staff over the past few years while concurrently facing a dramatic increase in the number of licensed and registered child day care facilities. Additionally, budget constraints have severely restricted the division's essential public awareness activities.

RECOMMENDATION:

THAT THE LEGISLATURE APPROPRIATE SUFFICIENT FUNDS TO THE CHILD CARE LICENSING DIVISION OF THE TEXAS DEPARTMENT OF HUMAN RESOURCES TO HIRE ADDITIONAL STAFF IN ORDER TO ENABLE THE DIVISION TO CARRY OUT ITS STATUTORY RESPONSIBILITIES MORE EFFECTIVELY AND TO INCREASE PUBLIC AWARENESS ACTIVITIES AS RECOMMENDED WITHIN THIS REPORT.

DISCUSSION:

* Perhaps the most serious problem facing the Child Care Licensing Division of the Texas Department of Human Resources is that the division's budget has not met the demands caused by the growing number of child care facilities in the state. Since 1977, the division has

experienced a 43% reduction in staff while the number of regulated child care facilities has increased by 53%.

* According to the department's Child Day Care Licensing Program Review Team, "the serious shortages that currently exist can cause instances of ineffective inspections, superficial complaint investigations, inconsistent follow-up to noncompliances, failure to take enforcement actions, and markedly low staff morale."
* Parents must have a clear understanding of the critical role they play in monitoring the care of their children in day care facilities. It should be the responsibility of the state to provide parents with sufficient information about child day care regulation.

REGULATION OF REGISTERED FAMILY HOMES

When developing the system of child day care regulation, the Texas Department of Human Resources recognized that without routine inspections by departmental licensing staff, parents and local authorities would need to assume a major role in monitoring compliance with minimum standards and state laws. The department currently requires all registered family home caregivers to provide a copy of its publication, "Parents' Guide to Registered Family Homes," to parents of children in their facilities. This publication includes minimum standards and offers guidelines on how to choose an appropriate facility. It has been a valuable tool in educating parents about the limited regulatory involvement the department has with registered family homes.

However, despite such efforts, there remains a great deal of public misconception about registration. Many parents misinterpret registration as the department's verification of a facility's continual compliance with minimum standards and accept the department's published list of operational registered family homes as a "stamp of approval" of the facilities listed.

One of the recommendations proposed by the department's Child Day Care Licensing Program Review Team was to increase regulatory activities in registered family homes by routinely inspecting either all or a random sample of those facilities.

In its final report, the Review Team stated, "These registered homes are businesses...where there are risks to children, and the Department should provide more oversight of such homes to reduce those risks. The simple fact that the Department informs the homes that they will not be inspected contributes to lack of concern by the provider about the need for meeting standards."

In public hearings on child day care regulation conducted by the Senate Committee on Health and Human Resources, conflicting testimony was presented on the issue of mandating routine state inspections of registered family homes. Some persons stated that requiring state inspections would "drive family homes underground." Others felt that registered facilities would welcome some type of state inspection so substandard family homes could be more easily identified and sanctioned.

There are sound reasons for excluding family homes from traditional licensing procedures, yet problems can arise when registered family homes are visited by department representatives only in response to complaints. The Senate Committee on Health and Human Resources believes the complex issue of effectively regulating registered family homes merits serious consideration and further study.

TRAINING

During public hearings conducted by the Senate Committee on Health and Human Resources on the issue of child day care regulation, much of the testimony pertained to the need for appropriate training for child care providers, especially those in registered family homes. Chapter 42 of the Human Resources Code directs the Texas Department of Human Resources to "offer consultation to potential applicants, applicants, and license and certification holders about meeting and maintaining standards for licensing and certification and achieving programs of excellence in child care." In past years, the department had an extensive consultation and training program for caregivers which was well-received, but due to budgetary constraints, the department currently provides only minimal training for child day care providers. The primary educational tool presently used by the department is the Child Care Quarterly, a magazine published four times annually and sent free of charge to all licensed, registered, and certified child care facilities.

The system of registration was originally implemented with sufficient funds for a consultation program for caregivers; however, after only two years of operation, the program was discontinued because of significant budget reductions. Registered family home providers have minimal contact

with departmental representatives and receive little, if any, technical assistance about child care skills. In fact, the only contact which some registered family home providers ever have with departmental representatives is during a complaint investigation.

The minimum standards for licensed child day care facilities require caregivers to participate in at least twelve hours of training annually. Local and state licensed day care provider associations have taken major steps toward helping caregivers to meet these training requirements by offering seminars and other continuing education programs designed to improve professional skills. Registered child care providers are not required to participate in a specific number of training hours annually, but often seek training opportunities on their own initiative. Additionally, newly formed registered provider associations are organizing workshops to address their members' training needs.

The Senate Committee on Health and Human Resources believes reinstigation of an extensive consultation program for all child day care providers could significantly reduce the incidence of substandard care by better informing caregivers about effective child care techniques. Furthermore, the committee supports the efforts of child day care associations to offer training opportunities for their members and believes such associations should play a major role in expanding the availability of child care training programs throughout the state.

CRIMINAL BACKGROUND CHECKS

One of the recommendations proposed by the Texas Department of Human Resources Child Day Care Licensing Program Review Team was "to pursue with the Texas Department of Public Safety and the Texas Legislature authorization for the department to conduct criminal background checks of persons providing care to children outside their own homes." The department has statutory authority under Section 3, Article 6252-13c, V.T.C.S., to conduct criminal background checks on persons applying for or holding licenses. Currently the department is working with the Department of Public Safety to establish a mechanism whereby criminal information can be obtained on owners of child care facilities. The department routinely checks its central registry of child abuse and neglect allegations, the Child Abuse and Neglect Reporting and Inquiring System (CANRIS), to determine if administrators' and caregivers' names have been submitted. Criminal information or documentation of abuse or neglect obtained through either of these two methods usually constitutes grounds for denying a facility's application for licensure or registration.

Within the minimum standards for all categories of child care facilities, the department prohibits persons who have been convicted of specific felony or misdemeanor charges within the preceding ten years from serving as caregivers. Additionally,

persons present in registered family homes who are indicted or are the subject of specific felony or misdemeanor charges are prohibited from having any contact with the children in care until the charges are resolved. However, the department does not have statutory authority to verify criminal information about caregivers beyond that authorized in Section 3 of Article 6252-13c, V.T.C.S., and must rely on the veracity of the information provided on applications for licensure or registration. According to the department, authority to verify relevant criminal information about all caregivers would be a valuable tool in prohibiting facilities from employing persons believed to be potentially harmful to children in care.

The Senate Committee on Health and Human Resources understands the concerns behind the proposal that the department's authority to conduct criminal background checks be expanded, but believes the issue needs further study before such statutory authority is granted. Careful consideration should be given to this issue to ensure that the legal rights of persons subject to the proposed checks are adequately protected and the checks are limited to offenses relevant to the provision of child care.

Regulation of Child-Care Facilities

·Chapter 42·

HUMAN RESOURCES CODE

PUBLISHED BY THE
TEXAS DEPARTMENT OF HUMAN RESOURCES
FOR REFERENCE PURPOSES ONLY

STOCK CODE 0815-1

INTRODUCTION

The material in this Chapter 42 supersedes the Child Care Licensing Act of 1975, without substantive change and incorporates related laws. Its appearance in this form is the result of action by the 66th Legislature, directing that laws relating to the operations of the Texas Department of Human Resources and to several other human services agencies be revised and recodified into one document. Entitled the Human Resources Code, it was effective September 1, 1979.

In recodifying the various laws relating to human services, the original laws were reorganized and edited. Material which was obsolete or meaningless was omitted, but no substantive changes were made or intended.

The Child Care Licensing Act of 1975, formerly Texas Revised Civil Statutes Annotated, Article 695a-3, is now Chapter 42 of the Human Resources Code. The correct citation for the future is Human Resources Code, Chapter 42.

CHAPTER 42. REGULATION OF CHILD-CARE FACILITIES

SUBCHAPTER A.
GENERAL PROVISIONS

Sec. 42.001. PURPOSE
Sec. 42.002. DEFINITIONS

(Sections 42.003-42.020
reserved for expansion)

SUBCHAPTER B.
ADMINISTRATIVE PROVISIONS

Sec. 42.021. DIVISION DESIGNATED
Sec. 42.022. STATE ADVISORY COMMITTEE
Sec. 42.023. ANNUAL REPORT
Sec. 42.024. ADMINISTRATIVE PROCEDURE

(Sections 42.025-42.040
reserved for expansion)

SUBCHAPTER C. REGULATION OF
CHILD-CARE FACILITIES

Sec. 42.041. REQUIRED LICENSE
Sec. 42.042. RULES AND STANDARDS
Sec. 42.043. RULES FOR IMMUNIZATIONS
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Sec. 42.045. RECORDS
Sec. 42.046. LICENSE APPLICATION
Sec. 42.047. CONSULTATIONS
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Sec. 42.050. LICENSE RENEWAL
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Sec. 42.052. CERTIFICATION AND
REGISTRATION
Sec. 42.053. AGENCY HOMES

(Sections 42.054-42.070
reserved for expansion)

SUBCHAPTER D. REMEDIES

Sec. 42.071. LICENSE SUSPENSION
Sec. 42.072. LICENSE DENIAL OR REVOCATION
Sec. 42.073. CLOSING A FACILITY
Sec. 42.074. INJUNCTIVE RELIEF
Sec. 42.075. CIVIL PENALTY
Sec. 42.076. CRIMINAL PENALTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. PURPOSE. The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate, and nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of religious instruction or the curriculum of a school sponsored by a religious organization.

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Child" means a person under 18 years of age.

(2) "Division" means the division designated by the department to carry out the provisions of this chapter.

(3) "Child-care facility" means a facility that provides care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(4) "Child-care institution" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training or correctional schools for children.

(5) "Foster group home" means a facility that provides care for 7 to 12 children for 24 hours a day.

(6) "Foster family home" means a facility that provides care for not more than six children for 24 hours a day.

(7) "Day-care center" means a facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(8) "Group day-care home" means a facility that provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.

(9) "Registered family home" means a facility that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care, but the total number of children, including the caretaker's own, does not exceed 12 at any given time.

(10) "Family day home" means a facility that provides care for not more than six children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of the children.

(11) "Agency home" means a private home that provides care for not more than six children, that is used only by a licensed child-placing agency, and that meets division standards.

(12) "Child-placing agency" means a person other than the natural parents or guardian of a child who plans for the placement of or places a child in an institution, agency home, or adoptive home.

(13) "Facilities" includes child-care facilities and child-placing agencies.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

(Sections 42.003-42.020 reserved for expansion)

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 42.021. DIVISION DESIGNATED. (a) The department shall designate a division within the department to regulate and license child-care facilities and child-placing agencies. The division shall enforce the provisions of this chapter and the rules and standards adopted by the department under this chapter and shall carry out other responsibilities the department may delegate or assign.

(b) The commissioner of the department shall appoint as director of the division a person who:

(1) meets the qualifications required of a child-care administrator by Chapter 43 of this code;

(2) holds a graduate degree in social science or law and has five years' administrative experience in a field related to child care; or

(3) has 10 years' experience in a field related to child care, at least 5 of which must be administrative.

(c) The department shall employ sufficient personnel and provide training for the personnel to carry out the provisions of this chapter.

(d) The director may divide the state into regions for the purpose of administering this chapter.

Sec. 42.022. STATE ADVISORY COMMITTEE. (a) The State Advisory Committee on Child-care Facilities is composed of 15 citizens of this state appointed by the commissioner.

(b) Members of the committee serve for terms of two years.

(c) The members must represent the following groups:

(1) parents, guardians, or custodians of children who use the facilities;

(2) child advocacy groups;

(3) operators of the facilities; and

(4) experts in various professional fields that are relevant to child care and development.

(d) At least three members of the division staff shall meet with the committee, and the division shall provide staff necessary for the committee.

(e) The committee shall review rules and minimum standards for child-care facilities and child-placing agencies promulgated by state agencies, and shall advise the department, the division, the council, and state agencies on problems of child-care facilities and child-placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem.

Sec. 42.023. ANNUAL REPORT. (a) The division shall send an annual report of its activities to the governor, lieutenant governor, and members of the legislature.

(b) The annual report shall include

(1) a report by regions of applications for licensure or certification, of provisional licenses issued, denied, or revoked, of licenses issued, denied, suspended or revoked, of emergency closures and injunctions, and of the compliance of state-operated agencies with certification requirements;

(2) a summary of the amount and kind of in-service training and other professional development opportunities provided for division staff;

(3) a summary of training and other professional development opportunities offered to facilities' staffs; and

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year.

(c) Copies of the annual report shall be available to any state citizen on request.

Sec. 42.024. ADMINISTRATIVE PROCEDURE. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all procedures under this chapter except where it is contrary to or inconsistent with the provisions of this chapter.

(Sections 42.025-42.040 reserved for expansion)

SUBCHAPTER C. REGULATION OF CHILD-CARE FACILITIES

Sec. 42.041. REQUIRED LICENSE. (a) No person may operate a child-care facility or child-placing agency without a license issued by the division.

(b) This section does not apply to

(1) a state-operated facility;

(2) an agency home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Texas Department of Health;

(6) a hospital licensed by the Texas Department of Mental Health and Mental Retardation or the Texas Department of Health;

(7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Central Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;

(10) a registered family home; and

(11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers educational programs for children age five and above in one or more of the following: kindergarten through at least grade three, elementary, or secondary grades.

(c) A single license that lists addresses and the appropriate facilities may be issued to a child-care institution that operates noncontiguous facilities that are nearby and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs.

(d) A person operating or desiring to operate a child-care facility that is exempt from the provisions of Subsection (a) of this section may apply to the division for a license as provided in Section 42.046 of this code. The division may not deny an exempt facility a license on the ground that it is exempt from Subsection (a) of this section. A facility exempt from the provisions of Subsection (a) of this section that desires to receive or participate in federal or state funding shall be required to comply with all other provisions of this Act and with all regulations promulgated thereunder.

(e) The exemptions provided by Subsection (b) of this section do not affect the authority of local, regional, or state health department officials, the state fire marshal, or local fire prevention officials to inspect child-care facilities.

Sec. 42.042. RULES AND STANDARDS. (a) The department shall make rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years.

(c) The department shall provide a standard procedure for receiving and recording complaints and a standard form for recording complaints.

(d) The department shall provide standard forms for applications and inspection reports.

(e) The department shall promulgate minimum standards for child-care facilities covered by this chapter that will:

(1) promote the health, safety, and welfare of children attending a facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities; and

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs.

(f) In promulgating minimum standards for child-care facilities, the department shall recognize the various categories of facilities, including facilities offering specialized care, and the various categories of children and their particular needs. Standards for child-care institutions must require an intake study before a child is placed in an institution. The intake study may be conducted at a community mental health and mental retardation center.

(g) In promulgating minimum standards, the department may recognize and treat differently the following child-care facilities: child-caring institutions, foster homes, day-care centers, group day-care homes, family day homes, registered family homes, and agency homes.

(h) The department shall promulgate minimum standards for child-placing agencies.

(i) Before adopting minimum standards, the division shall present the proposed standards to the State Advisory Committee on Child-Care Facilities for review and comment, and shall send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the council and the department.

(j) The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical.

(k) The department may not regulate or attempt to regulate or control the content or method of any instruction or curriculum of a school sponsored by a religious organization.

Sec. 42.043. RULES FOR IMMUNIZATIONS. (a) The department shall make rules for the immunization of children admitted to facilities.

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, rubella, and rubeola. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

(c) The Texas Department of Health shall make rules for the provisional admission of children to facilities and may modify or delete any of the immunizations listed in Subsection (b) of this section or require additional immunizations as a requirement for admission to a facility.

(d) No immunization may be required for admission to a facility if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization would be injurious to the health and well-being of the child or a member of the child's family or household, or

(2) an affidavit signed by the child's parent or guardian stating that the immunization conflicts with the tenets and practices of a recognized religious organization of which the applicant is an adherent or a member.

(e) Each facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the division at all reasonable times.

(f) The Texas Department of Health shall provide the immunizations required by this section to children in areas where there is no local provision of these services.

Sec. 42.044. INSPECTIONS. (a) An authorized representative of the division may visit a facility during operating hours to investigate, inspect, and evaluate.

(b) The division shall inspect all licensed or certified facilities at least once a year and may inspect other facilities as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The division must investigate a facility when a complaint is received. The division representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

(d) The division may call on political subdivisions and governmental agencies for assistance within their authorized fields.

Sec. 42.045. RECORDS. (a) A person who operates a licensed or certified facility shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) A person who operates a licensed facility shall have an annual audit by a certified public accountant of the facility's books. A copy of the accountant's statement of income and disbursements must accompany an application for a license. This subsection does not apply to a facility that provides care for less than 24 hours a day or to an agency home.

Sec. 42.046. LICENSE APPLICATION. (a) An applicant for a license to operate a child-care facility or child-placing agency shall submit to the divison a completed application on a form provided by the division.

(b) The division shall supply the applicant the application form and a copy of the appropriate minimum standards.

(c) After receiving an application, the division shall investigate the applicant and the plan of care for children.

(d) The division shall complete the investigation and decide on an application within two months after the date the division receives an application.

Sec. 42.047. CONSULTATIONS. (a) The department shall offer consultation to potential applicants, applicants, and license and certification holders about meeting and maintaining standards for licensing and certification and achieving programs of excellence in child care.

(b) The department shall offer consultation to prospective and actual users of facilities.

Sec. 42.048. ADVISORY OPINIONS. (a) The director of the division may give an advisory opinion on whether or not a planned facility or a planned change in an existing facility complies with the division's rules and minimum standards.

(b) A written opinion authorized by Subsection (a) of this section is binding on the division as a declaratory order if it is signed by the division director and the division representative administering this chapter in a division region, and if an applicant or license holder has acted in reliance on the opinion.

Sec. 42.049. LICENSING. (a) The division shall issue a license after determining that an applicant has satisfied all requirements.

(b) When issuing a license, the division may impose restrictions on a facility, including but not limited to the number of children to be served and the type of children to be served.

(c) The division may grant a variance of an individual standard set forth in the applicable standards for good and just cause.

(d) A license holder must display a license issued under this chapter in a prominent place at the facility.

(e) A license issued under this chapter is not transferable and applies only to the operator and facility location stated in the license application. A change in location or ownership automatically revokes a license.

(f) A biennial license must be issued if the division determines that a facility meets all requirements. The evaluation shall be based on a specified number of visits to the facility and a review of all required forms and records.

Sec. 42.050. LICENSE RENEWAL. (a) A license holder may apply for a new license in compliance with the requirements of this chapter and the rules promulgated by the division.

(b) The application for a new license must be completed and decided on by the division before the expiration of the license under which a facility is operating.

(c) The division shall evaluate the application for a new license to determine if all licensing requirements are met. The evaluation must include a specified number of visits to the facility and a review of all required visits to the facility and a review of all required forms and records.

Sec. 42.051. PROVISIONAL LICENSE. (a) The division shall issue a provisional license when a facility's plans meet the department's licensing requirements and one of the following situations exists:

(1) the facility is not currently operating;

(2) the facility is not licensed for the location stated in the application; or

(3) there is a change in ownership of the facility.

(b) A provisional license is valid for six months from the date it is issued and is not renewable.

Sec. 42.052. CERTIFICATION AND REGISTRATION. (a) A state-operated child-care facility or child-placing agency must receive certification of approval from the division. The certification of approval must be renewed every two years.

(b) To be certified, a facility must comply with the department's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A registered family home must be registered with the division.

(d) To be registered with the division, a registered family home must comply with the department's rules and standards and any provision of this chapter that applies to a registered family home.

(e) The certification requirements of this section do not apply to a Texas Youth Council facility or a facility providing services solely for the Texas Youth Council.

Sec. 42.053. AGENCY HOMES. (a) An agency home is considered part of the child-placing agency that operates the agency home for purposes of licensing.

(b) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency home used by the agency.

(c) An agency home shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(d) The division shall revoke or suspend the license of a child-placing agency if an agency home operated by the licensed agency fails to comply with Subsection (c) of this section.

(Sections 42.054-42.070
reserved for expansion)

SUBCHAPTER D. REMEDIES

Sec. 42.071. LICENSE SUSPENSION. (a) The division may suspend the license of a facility that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license.

(b) The division may suspend a facility's license for a definite period rather than deny or revoke the license if the division finds repeated noncompliance with standards that do not endanger the health and

safety of children. To qualify for license suspension under this subsection, a facility must suspend its operations and show that standards can be met within the suspension period.

(c) The division shall revoke the license of a facility that does not comply with standards after a license suspension.

Sec. 42.072. LICENSE DENIAL OR REVOCATION. (a) The division shall deny or revoke the license or certification of approval of a facility that does not comply with the requirements of this chapter, the standards and rules of the department, or the specific terms of the license or certification.

(b) The division shall notify the person operating or proposing to operate a facility of the reasons for the denial or revocation and of the person's right to appeal the decision within 30 days after receiving the notice.

(c) A person who wishes to appeal a license denial or revocation shall notify the director by certified mail within 30 days after receiving the notice required in Subsection (b) of this section. The person shall send a copy of the notice of appeal to the assigned division representative.

(d) Within 14 days after the date the appeal notification was mailed, the director shall appoint an advisory review board to hear the appeal or notify the person requesting the appeal that the request is denied.

(e) Within 14 days after notifying a person that an advisory review board will hear the case, the director shall appoint five of the person's peers to the board and set a date for the hearing. The date for the hearing must be within 28 days after the date the board members are appointed.

(f) The advisory review board shall hear the appeal and render its opinion to the director within seven days after the last day of the hearing. The board members shall receive actual travel expenses and the state per diem for each day of the hearing.

(g) A committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this chapter in the region where the facility in question is located shall review the opinion. The committee shall make a decision within 14 days after receiving the opinion and shall notify, by certified mail, the person who appealed.

(h) A person whose license has been denied or revoked may challenge the committee's decision by filing a suit in a district court of Travis County or the county in which the person's facility is located within 30 days after receiving the committee's decision. The trial shall be de novo.

(i) Records of the department's hearing shall be kept for one year after a committee decision is rendered. On request, and at the person's own expense, the division shall supply a copy of the verbatim transcript of the advisory board hearing to a person appealing a license denial or revocation in district court.

(j) A person may continue to operate a facility during an appeal of a license denial or revocation unless the division has sought injunctive relief under Section 42.074 or civil penalties under Section 42.075 of this code.

Sec. 42.073. CLOSING A FACILITY. (a) The division may close the facility and place the children attending the facility in another facility if the division finds violations of this chapter or violations of the department's rules and standards that create an immediate danger for children.

(b) A division representative who finds conditions described in Subsection (a) of this section shall immediately notify the director and request an immediate inspection of the facility by the director or the director's designee.

(c) The division shall report to the governor and the commissioner of the department when a state-operated facility is found in violation of this chapter or the department's rules and standards and the violation threatens serious harm to the children in the facility.

(d) Closing a facility under this section is an emergency measure. The division shall seek an injunction against continued operation of the facility after closing a facility under this section.

Sec. 42.074. INJUNCTIVE RELIEF. (a) When it appears that a person has violated, is violating, or is threatening to violate the licensing, certification, or registration requirements of this chapter or the department's licensing, certification, or registration rules and standards, the division may file a suit in a district court in Travis County or in the county where the facility is located for assessment and recovery of civil penalties under Section 42.075 of this code, for injunctive relief, including a temporary restraining order, or for both injunctive relief and civil penalties.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the division's request, the attorney general shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for

both injunctive relief and civil penalties as authorized by Subsection (a) of this section.

Sec. 42.075. CIVIL PENALTY. (a) A person is subject to a civil penalty of not less than $50 nor more than $100 for each day of violation and for each act of violation if the person

(1) threatens serious harm to a child in a facility by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period; or

(3) places a public advertisement for an unlicensed facility.

(b) The civil penalty authorized by this section is cumulative and in addition to the criminal penalties and injunctive relief provided by this chapter.

Sec. 42.076. CRIMINAL PENALTIES. (a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who places a public advertisement for an unlicensed facility commits a Class C misdemeanor.